

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO  
VILLATORO, MISAEAL ALEXANDER MARTINEZ  
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA  
MOREIRA and MATEO UMANA individually and on  
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO  
LANDSCAPING, INC., E.L.M. GENERAL  
CONSTRUCTION CORP. D/B/A KELLY'S CREW,  
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014  
(PAE)(SDA)

**NOTICE OF MOTION OF DEFENDANTS' MOTION TO DISMISS DEFENDANT  
KELCO LANDSCAPING, INC. AND TO DISMISS THE FOURTH THROUGH EIGHTH  
CAUSES OF ACTION FROM PLAINTIFFS' SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that upon the Memorandum of Law in Support of Defendants' Motion to Dismiss Defendant Kelco Landscaping, Inc. and to Dismiss the Fourth Through Eighth Causes of Action from Plaintiffs' Second Amended Complaint, Defendants Kelco Construction, Inc., Kelco Landscaping, Inc., E.L.M. General Construction Corp. d/b/a Kelly's Crew, John Kelly, and Joseph Provenzano (collectively, "Defendants"), by and through their attorneys, hereby move this Court before Magistrate Judge Stewart D. Aaron, United States District Court, Southern District of New York, 40 Foley Square, New York, New York, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing Defendant Kelco Landscaping, Inc. and dismissing the Fourth through Eighth causes of action asserted against Defendants in the Second Amended Complaint, and all other relief as the Court deems just and

proper.

Defendants' motion is based on this Notice of Motion, the Memorandum of Law in support thereof, Declaration of Eli Z. Freedberg, and all other pleadings, records, and papers filed in the above-captioned action, and such other matters as may properly come before this Court.

Dated: January 20, 2023  
New York, New York

/s/ **Eli Freedberg**

Eli Z. Freedberg  
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